

ROBERT E. BERGMAN
EVAN V. BERGMAN

IBLA 80-690

Decided March 5, 1981

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer. W 70213.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Rentals

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, no excuse may be considered, no discretion exercised, no grace period invoked, and the right of the next drawee to receive first consideration attaches eo instante.

2. Oil and Gas Leases: Rentals

Bureau of Land Management's cashing a late rental check and depositing it in an unearned account does not constitute acceptance of the rental payment.

APPEARANCES: Stephen D. Chiquoine, Esq., LaRowe & Gerlach, Reedsburg, Wisconsin for appellants.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Robert E. Bergman and Evan V. Bergman appeal from the May 15, 1980, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting their oil and gas lease offer W 70213 for parcel WY 5470. Appellants were first-drawn applicants for that parcel in the

November 1979 simultaneous oil and gas lease drawing. This offer was rejected because of appellant's failure to make timely payment of the first year's rental.

Appellants received a "Notice of Rental Due" for the lease on December 17, 1979. The notice stated: "In accordance with regulations 43 CFR 3112.4-1, payment of the first year's rental must be received in this office within fifteen (15) days from receipt of this Notice. If the rental is not paid within the time allowed, you will be automatically disqualified to receive the lease." Thus, the rental was due on or before January 2, 1980. However, a check, dated January 7, 1980, in the amount of the first year's rental was not received by BLM until January 10, 1980. The check was accompanied by a letter from appellants similarly dated January 7, 1980. This check was subsequently cashed by BLM.

[1] The applicable regulation, 43 CFR 3112.4-1, provides:

A lease will be issued to the first drawee qualified to receive a lease upon payment of the first year's rental. Rental must be received in the proper office of the Bureau of Land Management within fifteen (15) days from the date of receipt of notice that such payment is due. The drawee failing to submit the rental payment within the time allowed will be automatically disqualified to receive the lease, and consideration will be given to the entry of the drawee having the next highest priority in the drawing.

The disqualification is automatic and affords no latitude for any exercise of discretion by BLM. Susan Dawson, 35 IBLA 123 (1978), aff'd, Dawson v. Andrus, 612 F.2d 1280 (1980). The regulation advances the priority of the next drawee and precludes the application of 43 CFR 1821.2-2(g), allowing for Departmental discretion on acceptance of late filed documents, because the rights of a third party have intervened. Zenith S. Merritt, 46 IBLA 24 (1980); Donald E. Jordan, 35 IBLA 290 (1978); Robert D. Nininger, 16 IBLA 200 (1974), aff'd, Nininger v. Morton, Civ. No. 74-1246 (D.D.C. Mar. 25, 1975), wherein the Court held that the regulation 43 CFR 3112.4-1 is mandatory and allows no consideration of excuses for late payment.

[2] In their statement of reasons for appeal appellants admit the untimeliness of their payment but contend that BLM's cashing of their check amounted to an "acceptance" of their lease offer, contractually binding BLM to issue the lease. We do not agree. Appellants' check was endorsed and the amount deposited in an unearned account as part of BLM's routine accounting procedures. The reason for the procedure is to preserve the right of the applicant pending appeal of the rejection, to safeguard the payment, to create a record of it, and to

bring the payment under accounting control. See John J. Nordhoff, 24 IBLA 73, 74-75 (1976). The cashing of the check and depositing it in an unearned account does not constitute an acceptance of the payment. See Eugene H. Jankoski, 43 IBLA 323 (1979); Richard P. Smoot, 39 IBLA 1 (1979). The regulation, 43 CFR 3112.4-1, is controlling. BLM's compliance with its administrative record keeping duties cannot dictate a contrary result. A refund will be made in due course.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

